

# Chapter 4

## RCRA Permit Modification

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# RCRA PERMIT MODIFICATION

## INTRODUCTION

RCRA permit modifications may be initiated by:

- the permittee (in this case DOE), or
- the regulator

If any person or organization other than the permittee requests that a RCRA permit be modified, the regulator may decide to pursue the modification as a regulator-initiated modification. If the regulator decides not to pursue the modification, the modification is dropped.

This chapter discusses both mechanisms for modification.

The transfer of a RCRA permit, which is a change initiated by the permittee, is addressed in Module 4-1, Modifications Initiated by DOE. The revocation or forced termination of a RCRA permit, which is a change initiated by the regulator, is addressed in Module 4-2, Modifications/Terminations Initiated by the Regulator.

### **Module 4-1                      Modifications Initiated by DOE**

Modifications initiated by DOE include all changes to a permit requested by DOE, including permit transfers. The Federal RCRA regulations define three classes of permit modifications.

- Class 1 modifications are the least substantive permit changes. They involve routine changes and correction of errors. The regulatory requirements for obtaining Class 1 modifications involve minimal regulator oversight and public notification/participation. The transfer of a RCRA permit is a Class 1 permit modification. Class 1 permit modifications are discussed in Submodule 4-1-1.
- Class 2 modifications are substantive permit changes needed to maintain a facility's capability to manage wastes safely or to conform to new requirements. The regulatory requirements for obtaining Class 2 modifications involve considerable regulator input and public notification/participation. Class 2 permit modifications are discussed in Submodule 4-1-2.
- Class 3 modifications are the most substantive permit changes. These modifications are required to significantly alter the facility or its operations. The regulatory requirements for obtaining Class 3 permit modifications involve considerable regulator input, public notification/participation, and adherence to the administrative permitting procedures applicable to the processing of applications

for full RCRA permits in 40 CFR 124. Class 3 permit modifications are discussed in Submodule 4-1-3.

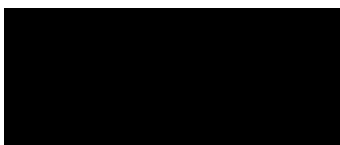
Actions requiring Class 1, 2, and 3 modifications are listed in Appendix I to 40 CFR 270.42. However, DOE might want to amend a permit to incorporate changes not explicitly listed in this appendix. Submodule 4-1-4 addresses these types of permit modifications.

Under certain conditions, Class 2 and Class 3 modifications can be made to RCRA permits without prior public notice or comment. Submodule 4-1-4 describes the conditions under which such temporary authorizations can be issued.

## **Module 4-2            Modifications/Terminations Initiated by the Regulator**

A regulator may modify, revoke and reissue, or terminate a RCRA permit for cause. The conditions under which a regulator may take these actions are addressed in this module.

## MODULE 4-1: Modifications Initiated by DOE



In the Federal RCRA regulations, a table comprising Appendix I to 40 CFR 270.42 lists possible actions requiring permit modifications. The modification associated with each action is assigned to Class 1, 2, or 3.

Some Class 1 Modifications  
Require Regulator Approval

Exhibit 4-1 lists the actions requiring Class 1 permit modifications included in Appendix I to 40 CFR 270.42. It shows that Class 1 modifications fall into two groups. Some Class 1 permit modifications require regulator approval before the changes triggering the modification are implemented, while others do not. Exhibit 4-2 lists the regulatory requirements for permittees and regulators that are associated with both types of Class 1 permit modifications.

Change of Ownership/  
Operational Control is  
Subject to Additional  
Requirements

A permit modification to reflect changes in the ownership or operational control of a facility is a Class 1 permit modification requiring prior regulator approval (40 CFR 270.40). This type of Class 1 permit modification is also subject to additional regulatory requirements. Specifically, this type of change requires that:

- a revised permit application be submitted to the regulator no later than 90 days before the scheduled change [270.40(b)];
- a written agreement containing the specific date for transfer of permit responsibility between current and new permittees be submitted to the regulator [270.40(b)]; and
- new owners/operators demonstrate compliance with 40 CFR 264, Subpart H financial requirements (40 CFR 264.143, 264.145, and 264.147) within 6 months after the change in ownership or operational control of the facility [270.40(b)] (unless, like DOE, the new owner/operator is exempt from these requirements).

## EXHIBIT 4-1

### ACTIONS REQUIRING CLASS 1 PERMIT MODIFICATIONS

- General Permit Provisions
  - Administrative and informational changes
  - Correction of typographical errors
  - Equipment replacement or upgrading with functionally equivalent components (e.g., pipes, valves, pumps, conveyors, controls)
  - Changes in the frequency of or procedures for monitoring, reporting, sampling, or maintenance activities by the permittee to provide for more frequent monitoring, reporting, sampling, or maintenance
  - Changes in interim compliance dates in a schedule of compliance\*
  - Changes in expiration date of permit to allow earlier permit termination\*
  - Changes in ownership or operational control of a facility, provided the procedures of §270.40(b) are followed\*
- General Facility Standards
  - Changes to waste sampling or analysis methods
    - To conform with agency guidance or regulations
    - To incorporate change associated with F039 (multi-source leachate) sampling or analysis methods
    - To incorporate changes associated with underlying hazardous constituents in ignitable or corrosive wastes\*
  - Changes to analytical quality assurance/control plan to conform with agency guidance or regulations
  - Changes in procedures for maintaining the operating record
  - Changes in the training plan that do not affect the type or decrease the amount of training given to employees
  - Contingency plan
    - Replacement with functionally equivalent equipment, upgrade, or relocate emergency equipment listed
    - Changes in name, address, or phone number of coordinators or other persons or agencies identified in the plan
  - Construction quality assurance plan changes that the CQA officer certifies in the operating record will provide equivalent or better certainty that the unit components meet the design specifications

## EXHIBIT 4-1 (Cont'd.)

- Groundwater Protection
  - Replacement of an existing well that has been damaged or rendered inoperable, without change to location, design, or depth of the well
  - Changes in groundwater sampling or analysis procedures or monitoring schedule\*
  - Changes in statistical procedure for determining whether a statistically significant change in groundwater quality between upgradient and downgradient wells has occurred\*
- Closure
  - Changes to the closure plan
    - Changes in estimate of maximum extent of operations or maximum inventory of waste on-site at any time during the active life of the facility\*
    - Changes in the closure schedule for any unit, changes in the final closure schedule for the facility, or extension of the closure period\*
    - Changes in the expected year of final closure, where other permit conditions are not changed\*
    - Changes in procedures for decontamination of facility equipment or structures\*
  - Addition of the following new units to be used temporarily for closure activities: tanks used for neutralization, dewatering, phase separation, or component separation\*
- Post-Closure
  - Changes in name, address, or phone number of contact in post-closure plan
  - Changes to the expected year of final closure, where other permit conditions are not changed

## EXHIBIT 4-1 (Cont'd.)

- Containers

- Modification or addition of container units

- Addition of a roof to a container unit without alteration of the containment system

- Modification or addition of containerized treatment processes necessary to treat wastes

- That are restricted from land disposal to meet some or all of the treatment standards\*

- To satisfy (in whole or in part) the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 40 CFR 268.8(a)(2)(ii)\*

These modifications may also involve addition of new waste codes or narrative descriptions of wastes, but cannot be used to add dioxin-containing wastes (F020, 021, 022, 023, 026, 027 and 028).

- Storage or treatment of different wastes in containers

- That require addition of units or change in treatment process or management standards, provided that the wastes are restricted from land disposal and are to be treated to meet some or all of the applicable treatment standards, or that are to be treated to satisfy (in whole or in part) the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 40 CFR 268.8(a)(2)(ii). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028)

- That do not require the addition of units or a change in the treatment process or management standards, provided that the units have previously received wastes of the same type (e.g., incinerator scrubber water). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028)\*



## EXHIBIT 4-1 (Cont'd.)

- Tanks
  - Modification or addition of tank units resulting in an increase in the facility's tank capacity by
    - Addition of a new tank that will operate for up to 90 days using any of the following physical or chemical treatment technologies: neutralization, dewatering, phase separation, or component separation\*
    - Modification or addition of tank units or treatment processes necessary to treat wastes that are restricted from land disposal to meet some or all of the applicable treatment standards or to treat wastes to satisfy (in whole or in part) the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 40 CFR 268.8(a)(2)(ii). This modification may also involve addition of new waste codes. It is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028)\*
  - Replacement of a tank with a tank that meets the same design standards and has a capacity within +/-10% of the replaced tank provided
    - The capacity difference is no more than 1500 gallons,
    - The facility's permitted tank capacity is not increased, and
    - The replacement tank meets the same conditions in the permit.
  - Management of different wastes in tanks
    - That require addition of units or change in treatment processes or management standards, provided that the wastes are restricted from land disposal and are to be treated to meet some or all of the applicable treatment standards, or that are to be treated to satisfy (in whole or in part) the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 40 CFR 268.8(a)(2)(ii). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028)\*
    - That do not require the addition of units or a change in the treatment process or management standards, and provided that the units have previously received wastes of the same type (e.g., incinerator scrubber water). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028)

## EXHIBIT 4-1 (Cont'd.)

- Surface Impoundments

- Treatment, storage, or disposal of different wastes in surface impoundments
  - That are wastes restricted from land disposal that meet the applicable treatment standards or that are treated to satisfy the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 40 CFR 269.8(a)(2)(ii), and provided that the unit meets the minimum technological requirements stated in 40 CFR 268.5(h)(2). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028)
  - That are residues from wastewater treatment or incineration, provided that disposal occurs in a unit that meets the minimum technological requirements stated in 40 CFR 268.5(h)(2), and provided further that the surface impoundment has previously received wastes of the same type (for example, incinerator scrubber water). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028)
- Modifications of unconstructed units to comply with 40 CFR 264.221(c), 264.222, 264.223, and 264.226(d)\*

- Landfills

- Landfill different wastes
  - That are wastes restricted from land disposal that meet the applicable treatment standards or that are treated to satisfy the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 40 CFR 268.8(a)(2)(ii), and provided that the landfill unit meets the minimum technological requirements stated in 40 CFR 268.5(h)(2). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028)
  - That are residues from wastewater treatment or incineration, provided that disposal occurs in a landfill unit that meets the minimum technological requirements stated in 40 CFR 268.5(h)(2), and provided further that the landfill has previously received wastes of the same type (for example, incinerator ash). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028)
- Modifications of unconstructed units to comply with 40 CFR 264.251(c), 264.252, 264.253, 264.254(c), 264.301(c), 264.302, 264.303(c), and 264.304\*

## EXHIBIT 4-1 (Cont'd.)

- Incinerators
  - Shakedown and trial burn
    - Authorization of up to an additional 720 hours of waste burning during the shakedown period for determining operational readiness after construction\*
    - Changes in the operating requirements set in the permit for conducting a trial burn, provided the change is minor\*
    - Changes in the ranges of the operating requirements set in the permit to reflect the results of the trial burn, provided the change is minor\*
  - Substitution of an alternative type of nonhazardous waste fuel that is not specified in the p
- Containment Buildings
  - Replacement of a containment building with a containment building that meets the same design standards provided
  - The unit capacity is not increased
  - The replacement containment building meets the same conditions in the permit

\*Requires prior regulator approval.

**EXHIBIT 4-2**  
**REGULATORY REQUIREMENTS ASSOCIATED WITH CLASS 1 PERMIT MODIFICATIONS (40 CFR 270.42)**

Type of Modification	Permittee Requirements (Citation)	Regulator Requirements (Citation)
Modification That Does Not Require Prior Approval of the Regulator	<ul style="list-style-type: none"> <li>• Notify the regulator concerning the modification by certified mail or other means that establish proof of delivery within 7 calendar days after the change is put into effect [40 CFR 270.42(a)(1)(i)].</li> <li>• The notice must specify the changes being made to permit conditions or supporting documents referenced by the permit and must explain why they are necessary [40 CFR 270.42(a)(1)(i)].</li> <li>• Along with the notice, provide applicable information required by 40 CFR 270 permit application regulations [40 CFR 270.42(a)(1)(i)]. (The exhibits in Chapter 2 list the information required by these regulations.)</li> <li>• Send a notice of the modification to all persons on the facility mailing list maintained by the regulator in accordance with 40 CFR 124.10(c)(viii) (or the equivalent State regulation) within 90 days after the change is put into effect [40 CFR 270.42(a)(1)(ii)].</li> <li>• Send a notice of the modification to the appropriate units of State and local government, as specified in 40 CFR 124.10(c)(ix) (or the equivalent State regulation) within 90 days after the change is put into effect [40 CFR 270.42(a)(1)(ii)].</li> </ul>	If any persons asks the regulator to review a Class 1 modification that does not require prior regulator approval, the regulator must inform the permittee by certified mail if the modification is rejected. The reasons for the rejection must be explained [40 CFR 270.42(a)(1)(iii)].
Modification that Requires Prior Approval of the Regulator	<ul style="list-style-type: none"> <li>• Obtain the prior written approval of the regulator [40 CFR 270.42(a)(1)(2)].</li> <li>• Within 90 days after the regulator approves the request, send a notice of the modification to all persons on the facility mailing list maintained by the regulator in accordance with 40 CFR 124.10(c)(viii) (or the equivalent State regulation) [40 CFR 270.42(a)(1)(ii)].</li> <li>• Within 90 days after the regulator approves the request, send a notice of the modification to the appropriate units of State and local government, as specified in 40 CFR 124.10(c)(ix) (or the equivalent State regulation) [40 CFR 270.42(a)(1)(ii)].</li> </ul>	There are no specific requirements applicable to the regulator.*

\* The permittee may elect to follow Class 2 modification procedures. These procedures require the regulator to approve or disapprove permit modification requests within specified time frames. See Exhibit 4-5 for additional information.

Once the regulator is notified of the proposed transfer of ownership or operational control, the regulator may elect to revoke and reissue the permit rather than modify the existing permit. In this case, an entirely new permit is processed according to the administrative permitting procedures applicable to the processing of RCRA permits in 40 CFR 124 (see Chapter 3).

DOE must request a Class 1 permit modification involving changes of ownership or operational control when:

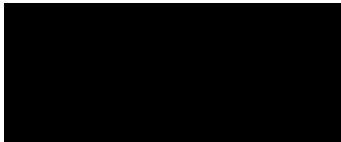
- selling or transferring DOE facilities or portions of facilities with RCRA permits,
- adding an operating contractor at a RCRA permitted facility, or
- replacing an operating contractor at a RCRA permitted facility with another contractor.

For example, when DOE transferred operations of the Paducah and Portsmouth Gaseous Diffusion Plants to the Uranium Enrichment Corporation (UEC), RCRA permits were modified to add the UEC as site operators.

Regulatory requirements applicable to the transfer of environmental permits are discussed in the DOE Information Brief entitled “Transfer of Environmental Permits After the Sale or Transfer of DOE Property” (EH-413-061/1195).

DOE May Follow Class 2 Procedures if the Regulator Does Not Respond to a Permit Modification Request

Any permittee may elect to follow the Class 2 permit modification procedures for Class 1 modifications. Using Class 2 procedures may be preferable for Class 1 modifications needing prior regulator approval if the regulator fails to respond to the permittee's Class 1 modification request. This is true because the procedural regulations applicable to Class 2 permit modifications require regulators to make decisions within specified time frames (see Submodule 4-1-2).



In the Federal RCRA regulations, a table comprising Appendix I to 40 CFR 270.42 lists possible actions requiring permit modifications. The modification associated with each action is assigned to Class 1, 2, or 3.

Exhibit 4-3 lists the actions requiring Class 2 permit modifications included in Appendix I to 40 CFR 270.42. In this submodule, two separate exhibits list the regulatory requirements applicable to permittees (Exhibit 4-4) and regulators (Exhibit 4-5) associated with Class 2 permit modifications.

The Regulator Must Respond with a Decision on a Class 2 Modification Request or DOE Will Receive Automatic Authorization

Exhibit 4-4 shows that DOE must satisfy requirements applicable to the contents of the permit modification request, public notice, public access, public meetings and public comment period. Exhibit 4-5 shows that the regulator must respond to DOE's request for a Class 2 modification within 90 days, although one response allows the regulator to take an additional 30 days to respond. The regulator may also approve a request, with or without changes, as a temporary authorization for up to 180 days. A temporary authorization may be reissued for an additional 180-day term [40 CFR 270.42(e)(4)(i)].

If the regulator fails to make a decision within 120 days after the modification request, DOE is automatically authorized to implement the requested modification for up to 180 days [40 CFR 270.42(b)(6)(iii)]. This is known as an "automatic authorization." The regulator may only extend the 120 day period if he or she receives written DOE approval for the extension [40 CFR 270.42(b)(6)(vii)].

Other Requirements Applicable to Automatic or Temporary Authorization

Regulator Approval or Denial Cancels an Automatic or Temporary Authorization

If the regulator approves or denies a Class 2 modification request during the term of an automatic or temporary authorization, the action cancels the automatic or temporary authorization [40 CFR 270.42(b)(6)(iii)].

**EXHIBIT 4-3**  
**ACTIONS REQUIRING CLASS 2 PERMIT MODIFICATIONS**

- General Permit Provisions
  - Changes in the frequency of or procedures for monitoring, reporting, sampling, or maintenance activities by the permittee that do not involve increased frequency
- General Facility Standards
  - Changes to waste sampling or analysis methods not listed on Exhibit 4-1
  - Changes to analytical quality assurance/control plan not listed on Exhibit 4-1
  - Changes in frequency or content of inspection schedules
  - Changes in the training plan that affect the type or decrease the amount of training given to employees
  - Contingency plan
    - Changes in emergency procedures (i.e., spill or release response procedures)
    - Removal of equipment from emergency equipment list
  - Construction quality assurance plan changes not listed on Exhibit 4-1
- Groundwater Protection
  - Changes in the number, location, depth, or design of upgradient or downgradient wells of permitted groundwater monitoring system
  - Changes in point of compliance
  - Changes in indicator parameters, hazardous constituents, or concentration limits (including ACLs) as specified in the detection monitoring program
  - Changes to a detection monitoring program as required by §264.98(h), unless otherwise specified on this Exhibit, Exhibit 4-1, or Exhibit 4-6

### EXHIBIT 4-3 (Cont'd.)

- Changes to a compliance monitoring program as required by §264.99(j), unless otherwise specified on this Exhibit, Exhibit 4-1, or Exhibit 4-6
- Changes to a corrective action program as required by §264.100(h), unless otherwise specified on this Exhibit, Exhibit 4-1, or Exhibit 4-6

- Closure

- Changes to the closure plan
  - Changes in approved closure plan resulting from unexpected events occurring during partial or final closure, unless otherwise specified on this Exhibit, Exhibit 4-1, or Exhibit 4-6
  - Extension of the closure period to allow a landfill, surface impoundment or land treatment unit to receive nonhazardous wastes after final receipt of hazardous wastes under §264.113(d) and (e)
- Addition of the following new units to be used temporarily for closure activities
  - Waste piles that comply with §264.250(c)
  - Tanks or containers (other than those used for neutralization, dewatering, phase separation or component separation)

- Post-Closure

- Extension of post-closure care period
- Changes in post-closure plan necessitated by events occurring during the active life of the facility, including partial and final closure



### EXHIBIT 4-3 (Cont'd.)

- Containers
  - Modification or addition of container units resulting in up to 25% increase in the facility's container storage capacity, except as provided on Exhibit 4-1
  - Modification of a container unit without increasing the capacity of the unit
  - Storage of different wastes in containers that do not require additional or different management practices from those authorized in the permit, except as provided on Exhibit 4-1
- Tanks
  - Modification or addition of tank units resulting in up to 25% increase in the facility's tank capacity, except as provided on Exhibit 4-1
  - Addition of a new tank that will operate for more than 90 days using any of the following physical or chemical treatment technologies: neutralization, dewatering, phase separation, or component separation
  - Modification of a tank unit or secondary containment system without increasing the capacity of the unit
  - Modification of a tank management practice
  - Management of different wastes in tanks that do not require additional or different management practices, tank design, different fire protection specifications, or significantly different tank treatment process than authorized in the permit, except as provided on Exhibit 4-1
- Surface Impoundments
  - Modification of a surface impoundment unit without increasing the facility's surface impoundment storage or treatment capacity and without modifying the unit's liner, leak detection system, or leachate collection system
  - Modification of a surface impoundment management practice

### EXHIBIT 4-3 (Cont'd.)

- Treatment, storage, or disposal of different wastes in surface impoundments that do not require additional or different management practices or different design of the liner or leak detection system than authorized in the permit.
- Changes in response action plan, except as provided on Exhibit 4-6

- Landfills

- Modification of a landfill unit without changing a liner, leachate collection system, leachate detection system, run-off control, or final cover system
- Modification of a landfill management practice
- Landfill different wastes that do not require additional or different management practices, different design of the liner, leachate collection system, or leachate detection system
- Changes in response action plan not listed on Exhibit 4-6

- Incinerators

- Changes to increase by up to 25% any of the following limits authorized in the permit: a thermal feed rate limit, a feedstream feed rate limit, a chlorine/chloride feed rate limit, a metal feed rate limit, or an ash feed rate limit. The regulator will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means
- Modification of an incinerator unit in a manner that would not likely affect the capability of the unit to meet the regulatory performance standards but which would change the operating conditions or monitoring requirements specified in the permit. The regulator may require a new trial burn to demonstrate compliance with the regulatory performance standards
- Modification of any other operating condition or any inspection or recordkeeping requirement specified in the permit
- Burning different wastes if the waste does not contain a POHC that is more difficult to burn than authorized by the permit and if burning of the waste does not require compliance with different regulatory performance standards than specified in the permit

### EXHIBIT 4-3 (Cont'd.)

- Modification of the trial burn plan or any of the permit conditions applicable during the shakedown period for determining operational readiness after construction, the trial burn period, or the period immediately following the trial burn
- Containment Buildings
  - Modification or addition of containment building units resulting in up to 25% increase in the facility's containment building storage or treatment capacity
  - Modification of a containment building unit or secondary containment system without increasing the capacity of the unit
  - Modification of a containment building management practice
  - Storage or treatment of different wastes in containment buildings that do not require additional or different management practices
- Corrective Action
  - Approval of a temporary unit or time extension for a temporary unit pursuant to §264.553

**EXHIBIT 4-4**  
**REGULATORY REQUIREMENTS FOR CLASS 2 PERMIT MODIFICATION REQUESTS (40 CFR 270.42)**

Type of Requirement	Requirements
Contents of Permit Modification Request	Submit a permit modification request to the regulator that describes the exact change to be made to the permit conditions and supporting documents referenced by the permit [40 CFR 270.42(b)(1)(i)], identifies the modification as a Class 1 modification for which the permittee elects to follow Class 2 procedures [40 CFR 270.42(a)(3)] or a Class 2 modification [40 CFR 270.42(b)(1)(ii)], explains why the modification is needed [40 CFR 270.42(b)(1)(iii)], and provides the applicable information required by 40 CFR part 270 permit application regulations [270.42(b)(1)(iv)]. (The exhibits in Chapter 2 list the information required by these regulations.)
Public Notice	Within 7 days before or after the date of submission of the modification request, send a notice of the request to all persons on the facility mailing list maintained by the regulator in accordance with 40 CFR 124.10(c)(viii) (or the equivalent State regulation), the appropriate units of State and local government, as specified in 40 CFR 124.10(c)(ix) (or the equivalent State regulation), and a major local newspaper of general circulation for publication [40 CFR 270.42(b)(2)]. The notice must include announcement of a 60-day comment period and the name and address of a regulatory agency contact to whom comments must be sent; announcement of the date, time and place for a public meeting on the modification request, the name and telephone number of the permittee's contact person, the name and telephone number of a regulatory agency contact person; location where copies of the modification request and any supporting documents can be viewed and copied; and the following statement, "The permittee's compliance history during the life of the permit being modified is available from the Agency contact person." Evidence of the mailing and publication of the notice must be provided to the regulator [40 CFR 270.42(b)(2)(i) - (vi)].
Public Access	Place a copy of the permit modification request and supporting documents in a location accessible to the public in the vicinity of the permitted facility [40 CFR 270.42(b)(3)].
Public Meeting	Hold a public meeting no earlier than 15 days after the publication of the notice in a major local newspaper (see the requirements associated with Public Notice above) and no later than 15 days before the close of the 60-day public comment period (see the requirements associated with the Public Comment Period below). The meeting must be held to the extent practicable in the vicinity of the permitted facility [40 CFR 270.42(b)(4)].
Public Comment Period	The public must be provided 60 days to comment on the modification request. The public comment period begins on the date the permittee publishes the notice in the local newspaper [40 CFR 270.42(b)(5)].

**EXHIBIT 4-5**  
**CLASS 2 PERMIT MODIFICATION REQUIREMENTS APPLICABLE TO REGULATORS (40 CFR 270.42)**

Situation	Regulator Requirements
Permittee has requested a Class 2 permit modification	<p>No later than 90 days after the receipt of the request, the regulator must:</p> <ul style="list-style-type: none"> <li>• approve the modification, with or without changes, and modify the permit accordingly;</li> <li>• deny the request;*</li> <li>• determine that the modification request must follow the procedures for a Class 3 modification;**</li> <li>• approve the request, with or without changes, as a temporary authorization having a term of up to 180 days***; or</li> <li>• notify DOE that he or she will decide on the request within the next 30 days [40 CFR 270.42(b)(6)(i)].</li> </ul>
Regulator has notified DOE that he or she will take an additional 30 days to decide on the Class 2 permit modification request	<p>No later than 120 days after the receipt of the request, the regulator must:</p> <ul style="list-style-type: none"> <li>• approve the modification, with or without changes, and modify the permit accordingly;</li> <li>• deny the request;*</li> <li>• determine that the modification request must follow the procedures for a Class 3 modification;** or</li> <li>• approve the request, with or without changes, as a temporary authorization having a term of up to 180 days***.</li> </ul> <p>Failure of the regulator to make one these decisions within 120 days automatically authorizes DOE to conduct the activities described in the modification request for up to 180 days.***</p>
All situations	The regulator must consider all written comments submitted to the regulatory agency during the public comment period and must respond in writing to all significant comments in conjunction with his or her decision.

\* The regulator may deny or change the terms of a Class 2 permit modification request because: the modification request is incomplete; the requested modification does not comply with the appropriate requirements of 40 CFR part 264 or other applicable requirements; or the conditions of the modification fail to protect human health and the environment.

\*\* The regulator will require the modification to follow the procedures for a Class 3 modification request if there is significant public concern about the proposed modification, or the complex nature of the change calls for the more extensive procedures of Class 3 modification.

\*\*\* The regulator may renew a temporary authorization for an additional 180-day term. Submodule 4-1-4 contains additional information applicable to temporary and automatic authorization.

Notification of Temporary Authorization to Persons on the Facility Mailing List is Required

However, if the regulator does not approve or deny the modification request by the date 50 days before the expiration of the automatic or temporary authorization period, DOE has seven days to take the following actions.

DOE must send a notification to persons on the facility mailing list, and make a reasonable effort to notify other persons who submitted comments on the modification request that:

- DOE has been authorized temporarily to conduct the activities described in the permit modification request, and
- unless the regulator acts to approve or deny the request by the end of the authorization period, DOE will receive permanent authorization to conduct the activities described in the modification request for the life of the permit [40 CFR 270.42(b)(6)(iv)(A)].

DOE's failure to notify the public by the dates specified above defers the effective date of the permanent authorization until 50 days after DOE notifies the public [40 CFR 270.42(b)(6)(iv)(B)].

Automatic or Temporary Authorization Can Become Permanent

If the regulator does not finally approve or deny a modification request before the end of the automatic or temporary authorization period (or reclassify the modification to a Class 3), DOE is authorized to conduct the activities described in the permit modification request for the life of the permit unless the permit is modified later. These activities must be conducted as described in the permit modification request and must be in compliance with all appropriate standards of 40 CFR 265 [40 CFR 270.42(b)(6)(v)].

Under certain conditions, activities normally requiring Class 2 modifications to RCRA permits can proceed temporarily without prior public notice or comment. Submodule 4-1-4 describes the conditions under which the regulator may grant DOE such temporary authorizations.

Construction May Begin 60 Days After a Permit Modification Request is Submitted

DOE may perform any construction associated with a Class 2 permit modification request beginning 60 days after the submission of the request unless the regulator establishes a later date for commencing construction and informs the permittee in writing before day 60 [40 CFR 270.42(b)(8)].

In the Federal RCRA regulations, a table comprising Appendix I to 40 CFR 270.42 lists possible actions requiring

permit modifications. The modification associated with each action is assigned to Class 1, 2, or 3.

DOE Must Satisfy Similar Requirements for Class 2 and Class 3 Modifications

Exhibit 4-6 lists the actions requiring Class 3 permit modifications included in Appendix I to 40 CFR 270.42. The regulatory requirements applicable to permittees associated with Class 3 permit modifications are listed on Exhibit 4-7. The exhibit shows that DOE must satisfy basically the same requirements for Class 3 modifications as for Class 2 modifications: contents of the permit modification request, public notice, public access, public meetings and a public comment period.

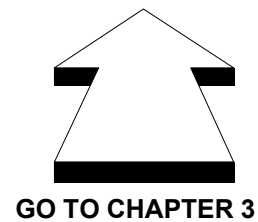
However, Administrative Procedures are Different

After the conclusion of the public comment period, the regulator must grant or deny the permit modification request according to the administrative procedures of 40 CFR 124. In addition, the regulator must consider and respond to all significant comments received during the public comment period.

***For more information on the administrative permit process, go to Chapter 3.***

See Submodule 4-1-4 for Temporary Authorization Without Prior Public Notice or Comment

Under certain conditions, activities normally requiring Class 3 modifications to RCRA permits can proceed temporarily without prior public notice or comment. Submodule 4-1-4 describes the conditions under which the regulator may grant DOE such temporary authorizations.



**EXHIBIT 4-6**  
**ACTIONS REQUIRING CLASS 3 PERMIT MODIFICATIONS**

- General Permit Provisions
  - Extension of a final compliance date
- Groundwater Protection
  - Changes in indicator parameters, hazardous constituents, or concentration limits (including ACLs) as specified in the groundwater protection standard
  - Addition of compliance monitoring program as required by 40 CFR 264.98(g)(4) and 264.99
  - Addition of a corrective action program as required by 40 CFR 264.99(i)(2) and 264.100
- Closure
  - Creation of a new landfill unit as part of closure
  - Addition of the following new units to be used temporarily for closure activities
    - Surface impoundments
    - Incinerators
    - Waste piles that do not comply with 40 CFR 264.250(c)
- Post-Closure
  - Reduction in the post-closure care period
- Containers
  - Modification or addition of container units resulting in greater than 25% increase in the facility's container storage capacity, except as provided on Exhibit 4-1
  - Storage of different wastes in containers that require additional or different management practices from those authorized in the permit, except as provided on Exhibits 4-1 and 4-3



## EXHIBIT 4-6 (Cont'd.)

- Tanks
  - Modification or addition of tank units resulting in greater than 25% increase in the facility's tank capacity, except as provided on Exhibits 4-1 and 4-3
  - Management of different wastes in tanks that require additional or different management practices, tank design, different fire protection specifications, or significantly different tank treatment process from that authorized in the permit, except as provided on Exhibit 4-1
- Surface Impoundments
  - Modification or addition of surface impoundment units that result in increasing the facility's surface impoundment storage or treatment capacity
  - Replacement of a surface impoundment unit
  - Treatment, storage, or disposal of different wastes in surface impoundments that require additional or different management practices or different design of the liner or leak detection system than authorized in the permit
  - Changes in response action plan
    - Increase in action leakage rate
    - Change in a specific response reducing its frequency or effectiveness
- Landfills
  - Modification or addition of landfill units that result in increasing the facility's disposal capacity
  - Replacement of a landfill
  - Addition or modification of a liner, leachate collection system, leachate detection system, run-off control, or final cover system
  - Landfill different wastes that require additional or different management practices, different design of the liner, leachate collection system, or leachate detection system
  - Changes in response action plan
    - Increase in action leakage rate
    - Change in a specific response reducing its frequency or effectiveness

## EXHIBIT 4-6 (Cont'd.)

- Incinerators

- Changes to increase by more than 25% any of the following limits authorized in the permit: a thermal feed rate limit, a feedstream feed rate limit, a chlorine/chloride feed rate limit, a metal feed rate limit, or an ash feed rate limit. The regulator will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means
- Modification of an incinerator unit by changing the internal size or geometry of the primary or secondary combustion units, by adding a primary or secondary combustion unit, by substantially changing the design of any component used to remove HCl/Cl<sub>2</sub>, metals, or particulate from the combustion gases, or by changing other features of the incinerator that could affect its capability to meet the regulatory performance standards. The regulator will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means
- Operating requirements
  - Modification of the limits specified in the permit for minimum or maximum combustion gas temperature, minimum combustion gas residence time, oxygen concentration in the secondary combustion chamber, flue gas carbon monoxide and hydrocarbon concentration, maximum temperature at the inlet to the particulate matter emission control system, or operating parameters for the air pollution control system. The regulator will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means.
  - Modification of any stack gas emission limits specified in the permit, or modification of any conditions in the permit concerning emergency shutdown or automatic waste feed cutoff procedures or controls
- Burning different wastes if the waste contains a POHC that is more difficult to burn than authorized by the permit or if burning of the waste requires compliance with different regulatory performance standards than specified in the permit. The regulator will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means

- Containment Buildings

- Modification or addition of containment building units resulting in greater than 25% increase in the facility's containment building storage or treatment capacity
- Storage or treatment of different wastes in containment buildings that require additional or different management practices

- Corrective Action

- Approval of a corrective action management unit (CAMU) pursuant to 40 CFR 264.552

**EXHIBIT 4-7**  
**REGULATORY REQUIREMENTS FOR CLASS 3 PERMIT MODIFICATION REQUESTS (40 CFR 270.42)**

Type of Requirement	Requirements (Citation)
Contents of Permit Modification Request	Submit a permit modification request to the regulator that describes the exact change to be made to the permit conditions and supporting documents referenced by the permit [40 CFR 270.42(c)(1)(i)], identifies the modification as a Class 3 modification [270.42(c)(1)(ii)], explains why the modification is needed [40 CFR 270.42(c)(1)(iii)], and provides the applicable information required by 40 CFR part 270 permit application regulations [40 CFR 270.42(c)(1)(iv)]. (The exhibits in Chapter 2 list the information required by these regulations.)
Public Notice	Within 7 days before or after the date of submission of the modification request, send a notice of the request to all persons on the facility mailing list maintained by the regulator in accordance with 40 CFR 124.10(c)(viii) (or the equivalent State regulation), the appropriate units of State and local government, as specified in 40 CFR 124.10(c)(ix) (or the equivalent State regulation), and a major local newspaper of general circulation for publication [40 CFR 270.42(c)(2)]. The notice must include announcement of a 60-day comment period and the name and address of a regulatory agency contact to whom comments must be sent; announcement of the date, time and place for a public meeting on the modification request, the name and telephone number of the permittee's contact person, the name and telephone number of a regulatory agency contact person; location where copies of the modification request and any supporting documents can be viewed and copied; and the following statement, "The permittee's compliance history during the life of the permit being modified is available from the Agency contact person." Evidence of the mailing and the publication must be provided to the regulator [40 CFR 270.42(c)(2)(i) - (vi)].
Public Access	Place a copy of the permit modification request and supporting documents in a location accessible to the public in the vicinity of the permitted facility [40 CFR 270.42(c)(3)].
Public Meeting	Hold a public meeting no earlier than 15 days after the publication of the notice in a major local newspaper (see the requirements associated with Public Notice above) and no later than 15 days before the close of the 60-day public comment period (see the requirements associated with the Public Comment Period below). The meeting must be held to the extent practicable in the vicinity of the permitted facility [40 CFR 270.42(c)(4)].
Public Comment Period	The public must be provided at least 60 days to comment on the modification request. The public comment period begins on the date the permittee publishes the notice in the local newspaper [40 CFR 270.42(c)(5)].

Permit Modifications Not  
Listed in Regulations

Provide the Regulator With  
Necessary Information to  
Support Your Request

The Regulator Is Required  
to Use These Criteria

### Other Modifications

For actions requiring a permit modification that is not listed on the table comprising Appendix I to 40 CFR 270.42, DOE may:

- submit a Class 3 permit modification request to the regulator, or
- request a determination by the regulator that the modification should be reviewed and approved as a Class 1 or Class 2 modification.

If DOE requests that a modification be reviewed and approved as a Class 1 or Class 2 modification, DOE must provide the regulator with the necessary information to support the requested classification. The regulator is required to make the determination as promptly as practicable using the following criteria [40 CFR 270.42(d)(2)].

- The regulator must consider the similarity of the requested modification to other modifications listed in Appendix I to 40 CFR 270.42.
- Class 1 modifications apply to minor changes that keep the permit current with routine changes to the facility or its operation. These changes do not substantially alter the permit conditions or reduce the capacity of the facility to protect human health or the environment [40 CFR 270.42(d)(2)(i)].
- Class 2 modifications apply to changes that are necessary to enable a permittee to respond, in a timely manner to
  - common variations in the types and quantities of the wastes managed under the facility permit,
  - technological advancements, and
  - changes necessary to comply with new regulations, where the changes can be implemented without substantially changing design specifications or management practices in the permit [40 CFR 270.42(d)(2)(ii)].

- Class 3 modifications substantially alter the facility or its operation [40 CFR 270.42(d)(2)(iii)].

#### Temporary Authorizations Not Requiring Prior Public Notice and Comment

The regulator may grant DOE permission to temporarily proceed with activities that would normally require Class 2 or Class 3 modifications to a RCRA permit without prior public notice and comment. Such temporary authorizations may not exceed a term of 180 days. Exhibit 4-8 lists the regulatory requirements applicable to these authorizations [40 CFR 270.42(e)].

DOE has used temporary authorizations to expedite implementation of new activities at permitted facilities and to provide an efficient mechanism to conduct new waste management activities of limited duration. For example:

A Temporary Authorization can Expedite Implementation of New Activities

- DOE has received temporary authorization to perform soil vapor extraction and other remediation activities at units that are currently permitted only for pump and treat groundwater remediation systems at the Savannah River Site. The temporary authorization allowed DOE to commence remediation while the permit modification request was prepared, reviewed, and approved.
- DOE received temporary authorization to treat mixed waste (i.e., size reduction of filter paper rolls in preparation for incineration) at a storage unit at the Savannah River Site. This activity was completed within 180 days, so no permanent permit modification was needed (see Exhibit 4-8).

Activities of Limited Duration Can be Performed Under a Temporary Authorization

**EXHIBIT 4-8**  
**REGULATORY REQUIREMENTS FOR CLASS 2 AND CLASS 3 TEMPORARY PERMIT**  
**MODIFICATIONS NOT REQUIRING PRIOR PUBLIC NOTICE AND COMMENT [40 CFR 270.42(e)]**

Type of Requirement	Requirements
Criteria for Class 2 Modifications	<p>The temporary authorization must be necessary to achieve one of several specific objectives before action is likely to be taken on a modification request. Objectives include to:</p> <ul style="list-style-type: none"> <li>• Facilitate timely implementation of closure or corrective action activities;</li> <li>• Allow treatment or storage in tanks, containers, or containment buildings in accordance with 40 CFR part 268;</li> <li>• Prevent disruption of ongoing waste management activities;</li> <li>• Enable DOE to respond to sudden changes in the types or quantities of the wastes managed under the facility permit; or</li> <li>• Facilitate other changes to protect human health and the environment.</li> </ul> <p>The activities to be authorized must be in compliance with 40 CFR part 264.</p>
Criteria for Class 3 Modifications	<p>The temporary authorization must be necessary to:</p> <ul style="list-style-type: none"> <li>• Facilitate timely implementation of closure or corrective action activities; or</li> <li>• Allow treatment or storage in tanks, containers, or containment buildings in accordance with 40 CFR part 268;</li> </ul> <p>Or the temporary authorization must be necessary to:</p> <ul style="list-style-type: none"> <li>• Prevent disruption of ongoing waste management activities and provide improved management or treatment of a hazardous waste already listed in the facility permit;</li> <li>• Enable DOE to respond to sudden changes in the types or quantities of the wastes managed under the facility permit and provide improved management or treatment of a hazardous waste already listed in the facility permit; or</li> <li>• Facilitate other changes to protect human health and the environment and provide improved management or treatment of a hazardous waste already listed in the facility permit.</li> </ul> <p>The activities to be authorized must be in compliance with 40 CFR part 264.</p>
Contents of Temporary Authorization Requests	<p>The temporary authorization request must include:</p> <ul style="list-style-type: none"> <li>• A description of the activities to be conducted under the temporary authorization;</li> <li>• An explanation of why the temporary authorization is necessary; and</li> <li>• Sufficient information to ensure compliance with 40 CFR part 264 standards.</li> </ul>

### EXHIBIT 4-8 (Cont'd.)

Type of Requirement	Requirements
Notice	DOE must send a notice of the temporary authorization request to all persons on the facility mailing list maintained by the regulator and to appropriate units of State and local governments as specified in 40 CFR 124.10(c)(ix). The notification must be made within seven days of submitting the authorization request.
Term of Temporary Authorizations	<p>Temporary authorizations must have a term of not more than 180 days. A temporary authorization may be reissued for one additional 180-day term provided that DOE has requested a Class 2 or 3 permit modification for the activity covered in the temporary authorization, and:</p> <ul style="list-style-type: none"><li>• The reissued temporary authorization constitutes the regulator's decision on the Class 2 permit modification; or</li><li>• The regulator determines that the reissued temporary authorization involving a Class 3 permit modification request is warranted to allow the authorized activities to continue while Class 3 permit modification procedures continue.</li></ul>

## MODULE 4-2: Modifications/Terminations Initiated by the Regulator

The regulator, or any person or organization, may initiate an action to modify or revoke a RCRA permit.

If the regulator decides to pursue a modification or revocation requested by a person or organization other than the permittee, it becomes a regulator-initiated modification or revocation.

Difference Between  
Modification and  
Revocation

- When a RCRA permit is modified, only the conditions subject to the modification are reopened.
- When a RCRA permit is revoked, the entire permit is reopened and subject to revision, and the permit is reissued for a new term.

Suitability of Location May  
Not Be Considered

The regulator may not consider suitability of the facility location at the time of permit modification or revocation and reissuance unless new information or standards indicate that a threat to human health and the environment exists which was unknown at the time of permit issuance. Causes for permit modification are listed on Exhibit 4-9.

The following are causes for terminating a permit during its term (or for denying a permit renewal):

Causes for Termination

- noncompliance with any condition of the permit;
- failure in the application or during the permit issuance process to disclose fully all relevant facts, or misrepresentation of any relevant facts at any time; or
- a determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by termination.

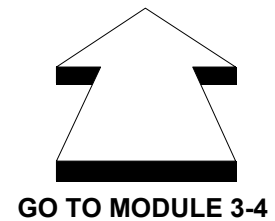


**EXHIBIT 4-9**  
**CAUSES FOR PERMIT MODIFICATION INITIATED BY THE REGULATOR (40 CFR 270.41)**

<b>Cause</b>	<b>Regulation</b>	<b>Citation</b>
Alterations	There are material and substantial alterations or additions to the permitted facility or activity which occurred after permit issuance which justify the application of permit conditions that are different or absent in the existing permit.	270.41(a)(1)
Information	The regulator has received information (other than revised regulations, guidance, or test methods) not available at the time of permit issuance that would have justified the application of different permit conditions at the time of issuance.	270.41(a)(2)
New Statutory Requirements or Regulations	The standards or regulations on which the permit was based have been changed by statute, through promulgation of new or amended standards or regulations, or by judicial decision after the permit was issued.	270.41(a)(3)
Compliance Schedules	The regulator determines good cause exists for modification of a compliance schedule, such as an act of God, strike, flood, or materials shortage or other events over which the permittee has little or no control and for which there is no reasonably available remedy.	270.41(a)(4)

In terminating any permit, the regulator must follow applicable procedures in 40 CFR 124.

***For information on the administrative process applicable to the termination of RCRA permits, go to Module 3-4.***



## **REFERENCES**

### **Statutes**

Resource Conservation and Recovery Act, P.L. 94-580, as amended.

### **Regulations**

40 CFR Part 124, "EPA Procedures for Decisionmaking."

40 CFR Part 264, "EPA Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities."

40 CFR Part 265, "EPA Interim Status Standards for Owners and Operators of Hazardous Waste Facilities."

40 CFR Part 270, "EPA Regulations for Federally Administered Hazardous Waste Permit Programs."

U.S. Department of Energy, Office of Environmental Policy and Assistance, "Transfer of Environmental Permits After the Sale or Transfer of DOE Property" [EH-413-061/1195 (November 1995)].

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